

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
)	Docket No. CWA-07-2018-0175
)	
RUNNING FOXES PETROLEUM, INC.)	
)	
Respondent,)	COMPLAINT AND
)	CONSENT AGREEMENT/
Proceedings under Sections)	FINAL ORDER
309(g) and 311(b)(6) of the)	
Clean Water Act,)	
33 U.S.C. §§ 1319(g) and 1321(b)(6))	
_____)	

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6), as amended by the Oil Pollution Act of 1990, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22.

2. Complainant, the U.S. Environmental Protection Agency, Region 7 (EPA) and Respondent, Running Foxes Petroleum, Inc., have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order (CAFO) serves as notice that the EPA has reason to believe that Respondent has violated Section 311 of the CWA, 33 U.S.C. § 1321, and regulations promulgated thereunder.

Parties

4. The authority to take action under Section 311(b)(6)(b)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(b)(i), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated the

authority under Section 311(b)(6) to the Director of the Air and Waste Management Division of EPA, Region 7 (collectively referred to as the "Complainant").

5. Respondent, Running Foxes Petroleum, Inc., is and was at all relevant times a corporation under the laws of, and authorized to conduct business in, the state of Missouri.

6. Respondent is a "person" as defined by Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

Statutory and Regulatory Framework

7. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides for the regulation of onshore facilities to prevent or contain discharges of oil. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides in part that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges."

8. To implement Section 311(j), 33 U.S.C. § 1321(j), the EPA promulgated regulations to prevent oil pollution. These regulations, codified at 40 C.F.R. Part 112, set forth the requirements for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan (SPCC Plan).

9. More specifically, under the authority of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), 40 C.F.R. Part 112 establishes procedures, methods and other requirements to prevent the discharge of oil from non-transportation-related onshore facilities into or upon the navigable waters of the United States.

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters," in part, as the "waters of the United States," which are defined at 40 C.F.R. § 112.2, and which include tributaries to waters of the United States.

11. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines.

12. Further, under 40 C.F.R. Part 112, owners or operators of onshore facilities that have an aboveground storage capacity of more than 1,320 gallons of oil, and due to their location could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, must prepare an SPCC Plan in writing, certified by a licensed Professional Engineer, and in accordance with the requirements of 40 C.F.R. § 112.7.

EPA's Specific Allegations

13. Respondent is and was at all times relevant to this action the “owner or operator,” within the meaning of 40 C.F.R. § 112.2 and Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of two oil production facilities (“Facilities”): the North Stoner Lease located at South 100 Road at East Hudson Road, and the Emmerson Lease located at South 100 Road at Soldier Road, each approximately 3.4 miles northwest of Richards, Missouri.

14. The North Stoner Lease is located less than 750 feet to a tributary to an unnamed tributary to Shiloh Creek. The Emmerson Lease is located less than 100 feet to a tributary to an unnamed tributary to Shiloh Creek. Each facility is approximately 2.5 miles from Shiloh Creek. Shiloh Creek and its tributaries are “waters of the United States” as defined by 40 C.F.R. § 112.2 and Section 502(7) of the CWA, 33 U.S.C § 1362(7).

15. Respondent’s Facilities are “onshore facilities” within the meaning of 40 C.F.R. § 112.2 and Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

16. Respondent’s Facilities are “non-transportation-related facilities” as defined by Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

17. Respondent’s Facilities are non-transportation-related onshore facilities which, due to their locations, could reasonably be expected to discharge oil to a navigable water of the United States in a harmful quantity. Therefore, pursuant to the CWA and 40 C.F.R. § 112.1, Respondent, as the owner and operator of an SPCC-regulated facilities, is subject to the SPCC regulations.

18. Each of the Facilities are covered under one SPCC Plan, dated January 2013 and updated October 2015 and February 2017.

19. On June 6, 2016, a landowner adjacent to the Emmerson Facility reported to the Bourbon, Kansas County Emergency Management Office a release of produced water and crude oil from the Emmerson Facility. Personnel from the Missouri Department of Natural Resources (MDNR) responded to the spill and identified that, due to inadequate primary and secondary containment, approximately 1,700 gallons of produced water and crude oil were discharged into the unnamed tributary to Shiloh Creek.

20. Based on the reported release and discharge from the Emmerson Facility, EPA Region 7 conducted compliance inspections of the Emmerson and North Stoner Facilities on June 13, 2016, as well as Respondent’s Shaw Facility, located at Soldier Road and South 100 Road on the Kansas/Missouri State Line. Among other findings, at each of the three Facilities, EPA identified that secondary containment berms were significantly lower than described in the Facilities’ SPCC Plan and that the actual containment at each site was significantly lower than described in the SPCC Plan.

21. On May 10, 2017, EPA issued a Notice of Noncompliance to Respondent for violations of the North Stoner Facility’s SPCC Plan. On February 8, 2017, EPA entered into an

Expedited Settlement Agreement with Respondent for the discharge from the Emmerson Facility as well as violations of the Facility's SPCC Plan. The Agreement included a \$975 civil penalty. On February 8, 2017, EPA entered into an Expedited Settlement Agreement with Respondent for violations of the Shaw Facility's SPCC Plan. The Agreement included a \$900 civil penalty.

22. On July 26, 2017, a landowner adjacent to the Emmerson Facility reported to MDNR and EPA a release of produced water and crude oil from the North Stoner Facility. Personnel from Running Foxes Petroleum responded to the spill and concluded that the spill resulted from vandalism at the Facility, that approximately 8,400 gallons of produced water and crude oil breached secondary containment, and that approximately 3,360 gallons of produced water and crude oil were discharged into the unnamed tributary to Shiloh Creek. Respondent reported to EPA that the releases from the Facility were a result of vandalism.

23. On July 28, 2017, EPA, Region 7 conducted compliance inspections of the Emmerson and North Stoner Facilities. Among other findings, at both Facilities, EPA identified that secondary containment berms were significantly lower than described in the Facilities' SPCC Plan and that the actual containment at each site was significantly lower than described in the SPCC Plan.

24. During the Inspections, the EPA inspector obtained from Respondent copies of the Facilities' SPCC Plan.

Counts 1 and 2
Failure to Provide Adequate Secondary Containment

25. 40 C.F.R. § 112.9(c)(2) requires regulated facilities to provide secondary containment sufficient to contain the entire capacity of the largest single container.

26. During EPA's July 28, 2017 inspection of the Emmerson Facility, inspectors observed that the berm height was lower than the SPCC Plan's design berm height of 30 inches and that the berm was measured at 14.5 inches at the lowest point. The July 28, 2017 inspection of the North Stoner Facility revealed that the berm height was lower than the SPCC Plan's design berm height of 30 inches and that the berm was measured at six inches at the lowest point. Respondent's failure to provide adequate secondary means of containment at each Facility are violations of 40 C.F.R. 112.9(c)(2).

Count 3
Insufficient Descriptions of Facilities in SPCC Plans

27. 40 C.F.R. § 112.7(a)(3) requires that an SPCC Plan describe the physical layout of the facility and include a facility diagram, including the location and contents of each fixed oil storage container, including discharge or drainage controls, such as secondary containment around containers, and other structures, equipment, and procedures for the control of a discharge.

28. During EPA's July 28, 2017 inspection of the Emmerson Facility, the inspector observed a detention basin containing free oil. The detention basin is not listed in the SPCC Plan. Respondent's failure to accurately describe the Facilities in its SPCC Plan is a violation of 40 C.F.R. § 112.7(a)(3)(i).

**Counts 4 and 5
Failure to Maintain Records**

29. 40 C.F.R. § 112.7(e) requires Respondent to maintain records of required inspections for a period of three years.

30. A review of the records at the Emmerson and North Stoner Facilities during the EPA inspection revealed that Respondent failed to maintain inspection records for September and November 2016 and May and June 2017 for both Facilities. Failure to maintain inspection records is a violation of 40 C.F.R. § 112.7(e).

CONSENT AGREEMENT

31. Respondent and the EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

32. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

33. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in the Specific Allegations section set forth above.

34. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the Final Order portion of this CAFO.

35. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

36. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

37. Nothing contained in this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

38. This CAFO addresses all civil and administrative claims for the CWA violations alleged above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

39. Respondent further certifies by the signing of this CAFO that, to the best of its knowledge, Respondent's Facilities are in compliance with Respondent's SPCC Plan and all requirements of Section 311 of the CWA, 33 U.S.C. § 1321.

40. The effect of settlement described herein above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 39 above.

41. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a civil penalty of \$5,000 as set forth in the Penalty section below.

42. Respondent understands that its failure to timely pay any portion of the civil penalty described in the Penalty Section below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest.

Penalty

43. Respondent agrees to pay a civil penalty of Five Thousand dollars (\$5,000) pursuant to the authority of Section 311 of the CWA, 33 U.S.C. § 1321. Respondent will pay \$2,500 within 30 days after the effective date of this CAFO and the remaining \$2,500 within 90 days after the effective date of this CAFO.

44. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

45. The payment of penalties must reference docket number CWA-07-2018-0175 and be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

46. Copies of the checks or verification of another payment method for the penalty payments remitted shall be mailed to:

Chris Muehlberger
Attorney Advisor
U.S. Environmental Protection Agency- Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Regional Hearing Clerk
U.S. Environmental Protection Agency~ Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

47. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state or local income tax purposes.

Parties Bound

48. This CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

General Provisions

49. Notwithstanding any other provision of this CAFO, the EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action pursuant to Section 311 of the CWA, 33 U.S.C. § 1321, and to seek penalties against Respondent or to seek any other remedy allowed by law.

50. With respect to matters not addressed in this CAFO and Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

51. This executed Complaint and Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

52. Respondent and Complainant shall bear their respective costs and attorneys' fees incurred as a result of this action.

COMPLAINANT
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

John Smith
Deputy Director
Air and Waste Management Division
U.S. Environmental Protection Agency - Region 7

Date: _____

Chris Muehlberger
Office of Regional Counsel

RESPONDENT
Running Foxes Petroleum, Inc.

Date: 8/14/2018



Signature

JOE TAGLIERI

Name

PRESIDENT

Title

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo

Date